

POLAR RESOURCES CO.

IBLA 81-662

Decided September 22, 1981

Appeal from decisions of Utah State Office, Bureau of Land Management, deeming unpatented mining claims to be abandoned and void. U MC 3413 through U MC 3721; U MC 3848 through U MC 3911; U MC 10632 through U MC 10646; and U MC 11046 through U MC 11133.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of a notice of intention to hold or evidence of performance of annual assessment work on the claim, as recorded in the office where the location notice of the claim is recorded, prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement or of the statutory consequences of the claim being deemed conclusively to be abandoned for failure to comply.

APPEARANCES: C. Warren Hunt, President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Polar Resources Company appeals several decisions dated May 8, 1981, wherein the Utah State Office, Bureau of Land Management (BLM), deemed certain unpatented mining claims 1/ to be abandoned and void for

1/ The mining claims at issue are: Cow Nos. 1 through 309, U MC 3413 through U MC 3721; Scowl Nos. 1 through 46, U MC 3848 through U MC 3893; Sun Nos. 305 through 322, U MC 3894 through 3911; I Q Nos. 2, 3, 6 through 18, U MC 10632 through U MC 10646; Scowl Nos. 47 through 114, Cow Nos. 310 through 329, U MC 11046 through U MC 11133. All of these claims were located after Oct. 21, 1976.

failure to file evidence of assessment work or a notice of intention to hold the claims on or before December 30, 1980, as required by 43 CFR 3833.2-1.

With the appeal appellant provided a copy of a telegram apparently submitted for transmission to CNCP Telecommunications, Calgary, Alberta, Canada, on December 23, 1980, addressed to BLM, Salt Lake City, Utah, and intended to be a notice of intention to hold a large number of unpatented mining claims for 1980, including all the claims listed in the several BLM decisions of May 8, 1981.

Copies of the affidavits of annual assessment work performed on or for the benefit of the claims, as recorded on August 25, 1980, in Emery County, Utah, were submitted to BLM on January 2, 1981.

[1] The record clearly shows, however, that the telegram was not delivered to BLM on or before December 30, 1980. It was not received until the afternoon of December 31, 1980. The regulations provide that in order for documents for mining claim recordation purposes to be filed with BLM, the documents must be received and date stamped by the proper BLM office. 43 CFR 3833.1-2. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing the document in the mails does not constitute filing. 43 CFR 1821.2-2(f); Glenn D. Graham, 55 IBLA 39 (1981). Similarly, we hold that transmitting a telegram which is not timely delivered to the proper BLM office does not constitute filing, as contemplated by the regulations. Having chosen the means of delivery, appellant must bear the consequences of untimely delivery of his filings. Glenn D. Graham, supra.

The applicable statute, section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim shall, prior to December 31 each year, file for record in the office where the location notice for the claim is recorded a notice of intention to hold the claim or an affidavit of assessment work performed on or for the claim, and likewise, prior to December 31 each year, shall file in the proper office of BLM a copy of the official record of the instrument filed in the county records. Ted Dilday, 56 IBLA 337, 88 I.D. (1981). There is nothing in the record to indicate the notice of intention contained in the telegram filed with BLM was ever filed for record with the recorder of Emery County, Utah.

As the required filings for the unpatented mining claims in the Scowl, Cow, I Q, and Sun groups were not made with BLM prior to

December 31, 1980, the claims were properly deemed to be abandoned and void. This Board has no authority to excuse a late filing or to waive the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

